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SEP 22 2003

Patent Application

GROUP 3600

S/N: 08/975,940

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EL 967947541

REMARKS

*Introduction*

Applicants have not amended any of the claims in the application.

5 Claims 36 through 47 remain pending in the application. There are 8 independent claims.

*Drawings*

The Patent Office has indicated in paper no 33, mailed August 31, 10 2001, that the formal drawings submitted in August of 2001 have been accepted.

*Allowed Claims*

Applicants would like to thank the examiner for indicating that claims 15 37 – 40, 43 and 47 are allowed.

*Rejection under 35 USC § 102(e)*

The examiner has rejected claims 36, 41 and 45 as being anticipated by U.S. Patent 6,158,184, granted to Timmerman, Sr. et al (hereinafter 20 Timmerman '184).

The examiner has rejected claims 36, 41, and 45 on the basis of Timmerman '184 under 35 USC §102(e).

A granted patent under 35 USC §102(e) is prior art as of the date of its filing. The non-provisional application that became Timmerman '184 was 25 filed on April 14, 1998.

The present application was filed November 21, 1997: almost 6 months earlier.

In order for Timmerman '184 to be considered prior art under 35 USC §102(e) against an application filed earlier than it, it must claim priority from 30 an earlier filed application, and the earlier filed application must provide a legally sufficient disclosure under the first paragraph of 35 USC §112 of the elements used as the basis for the rejection.

Timmerman '184 does claim the benefit of earlier-filed provisional application 60/043,835, filed on April 14, 1997 (hereinafter Timmerman 35 Provisional '835).



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1 However, if the examiner is arguing that Timmerman Provisional '835 discloses all of the elements of the present invention, Applicants respectfully disagree.

5 Most importantly, the examiner in the rejection states that the shear resisting assembly of Timmerman includes a "planar shear-resisting element" which I believe the examiner is saying corresponds to the "planar shear-resisting element" of claims 36, 41 and 45, as well as, claims 42, which depends from 41, 44, and 46 which depends from 45.

10 In the present application, the "planar shear-resisting element" is labeled as element 10 in the drawings and is described in the specification at page 5, line 3.

The examiner in the office action has identified the corresponding "planar shear-resisting element" of Timmerman as element 26 in figures 1 and 4, or element 532 in figure 5.

15 With respect to calling the Timmerman element 26 a "planar shear-resisting element", Applicants have reviewed the file wrappers of Timmerman Provisional '835 and Timmerman '184, and note that element 26 is described in both Timmerman Provisional '835 and Timmerman '184, as originally filed, at page 13, line 6, as "furring boards". See column 6, line 20 33 of Timmerman '184 as issued.

Applicants note that they were at first confused about the nature of element 26 in both Timmerman applications; however, the above-mentioned description in the written specification seems correct in light of figure 1 in both applications. In figure 1 of both applications, element 26 appears on 25 the left-hand side of the page, halfway up.

In light of the fact that element 26 in Timmerman is actually a furring board, Applicants respectfully disagree that element 26 shown in either Timmerman Provisional '835 or Timmerman '184 can correspond to the "planar shear resisting element" of claims 36, 41 and 45, as well as claims 30 42, 44 and 46 of the present invention.

With respect to Timmerman element 532 in figure 5, Applicants have carefully reviewed Timmerman Provisional '835 and Timmerman '184 and have found that element 532 in Timmerman Provisional '835 is different from element 532 in Timmerman '184. For some reason, when Timmerman 35 '184 was filed, the numbers of many of the elements were radically changed.



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1 With respect to Timmerman Provisional '184, element 532, as shown in figure 8A, is a portion, specifically a bolt platform 532, of the foundation bolt placement template 530. See Timmerman Provisional '835 at page 19, line 33 through page 20, line 4. Therefore, Applicants respectfully disagree

5 that element 532 in Timmerman Provisional '835 could correspond to a planar shear resisting element as claimed in the present application.

With respect to the later-filed Timmerman non-provisional, figure 5, along with figure 6, are new figures that do not appear in Timmerman Provisional '835.

10 Applicants do agree that in Timmerman '184, element 532 corresponds to the "planar shear resisting element" of claims 36, 41 and 45, as well as, claims 42, 44 and 46 of the present invention; however, this matter is new to Timmerman '184 and cannot serve as the basis for a 102(e) rejection.

15 Therefore, Applicants respectfully request that the examiner withdraw the 102(e) rejection based on Timmerman.

Applicants also respectfully disagree with the examiner's characterization of other parts in the Timmerman applications and the relation to the present application. Applicants believe that the examiner has

20 improperly supplied missing elements to the teaching of Timmerman in making the anticipation rejection.

Claims 36, 41 and 45 specifically describe building a wall comprising the following elements: a bottom plate resting on the underlying structural component of the building, means for connecting the bottom plate to the

25 underlying structural component, a plurality of vertically-disposed studs resting on the bottom plate, means for connecting the plurality of vertically-disposed studs to said bottom plate, a top plate resting on the vertically-disposed studs, and means for connecting the top plate to the vertically-disposed studs.

30 The examiner has stated that element 11 of figure 1 of the Timmerman applications can be considered a "bottom plate". Applicants have reviewed the Timmerman applications carefully, and note that element 11 appears in figure 1 twice. The second time it appears, element 11 appears to be a nail plate halfway up the figure on the left edge. Element 11

35 also appears in figures 7 and 8 and appears to be pointing at more nail plates. Applicants do not believe that element 11 of the Timmerman



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1 applications corresponds to the "bottom plate" as claimed in the present application.

In figure 4 of Timmerman '184, Applicants also disagree with the examiner's characterization that element 114 (described as a "trimmer" at page 14, line 22 in the application as filed and at column 7, line 17 as published) is connected to a bottom plate. Trimmer 114 appears to rest directly on the foundation.

With respect to element 110 of figure 4 of Timmerman '184, Applicants note that this is labeled as header 110 at page 15, line 6 of the application as filed and at column 7, line 17 as published, and the connection to elements 114 and 115 to element 110 appears to not be described, therefore it is improper to add information to this reference to try to reject the present claims on the basis of anticipation.

With respect to the connection of the shear resisting assembly of the present invention to the top plate, Applicants do not believe that the Timmerman applications adequately describe this connection to anticipate the claims of this application.

The examiner appears to argue that such a connection described is inherent to the disclosure of Timmerman. However, none of the drawings relating to the new shear resisting assembly in either of the Timmerman applications show this connection being made or show how the shear resisting assembly is adapted to make this connection. Furthermore, element 110 is shown only in figures 4 and 6. In the specification of Timmerman '184 as published, figures 4 and 6 are described at column 7, lines 27 to 47 and lines 59 to 67, respectively. Neither of these description say anything about the connection of the element 110 to the shear resisting assembly of Timmerman, except that the rigid structural panel "provides vertical support for header 110". If the examiner is claiming the teaching is inherent on the basis of these description, Applicants must respectfully disagree with the examiner since the rigid structural panels of Timmerman could provide vertical support to header 110 without being connected to it.

In comparison, claim 36 specifically calls for "top plate fasteners, having a threaded shank portion" for making this connection.

Applicants respectfully request that the examiner remove the rejections of claims 36, 41 and 45 based on 35 USC §102(e).



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1 *Rejection under 35 USC §103(a)*

The examiner has rejected claims 42, 44 and 46 as being obvious under 35 USC §103(a) in light of Timmerman '184 and what the examiner appears to consider to be commonly accepted knowledge in the prior art.

5 In making the 103 rejection, the examiner relies on Timmerman '184 to supply the same elements the examiner used when making the 102 rejection.

As stated above, Applicants respectfully disagree that Timmerman '184 can be considered as prior art for the elements used by the examiner.

10 Applicants incorporate the above argument here.

Thus, Applicants feel that the examiner's 103 rejection of claims 42, 44 and 46 is improper, and should be removed.

Furthermore, in making the rejection of claim 42, the examiner has stated that it would be obvious to insert threaded holdown fasteners only a 15 selected distance into the first and second chords without passing all the way through the first and second chords, and that Applicants have failed to claim that this limitation solves any stated problem.

Applicants respectfully disagree with the comments of the examiner. Applicants respectfully disagree that it would be obvious to attach a holdown 20 in the manner described. Furthermore, as stated in the specification at page 10, lines 16 — 20: "As shown in Figure 10B, holdown fasteners are preferably inserted only a selected distance into the first and second chords 19 and 20 without passing all the way through the first and second chords 19 and 20. This allows the shear-resisting assembly 9 to fit closely between 25 the studs 5 of the wall 1." For a view of the close tolerance that are sometimes necessary, Applicants refer the examiner to figures 9 and 13 of the application.

Applicants respectfully request that the examiner remove the rejections based on claims 42, 44 and 46.

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*Conclusion*

In view of the above, Applicants submit that the claims remaining in the application are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of the rejected claims at an 35 early date is solicited.



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1 Applicants' attorney would be happy to answer any questions the examiner may have regarding this application by phone at 510 832 4111.

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